

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7545

Petition of Vermont Electric Cooperative, Inc. for a )  
Certificate of Public Good, pursuant to 30 V.S.A. )  
Section 248, authorizing the replacement of 5.25 )  
miles of 46 kV transmission line that begins just )  
west of Hinman Settler Road in Derby, Vermont, and )  
ends at VEC's West Charleston Substation in )  
Charleston, Vermont )

Order entered: 2/2/2010

**ORDER RE: VERMONT ELECTRIC COOPERATIVE'S MOTION TO ALLOW CONSTRUCTION  
PRIOR TO RECEIPT OF U.S. ARMY CORPS OF ENGINEER'S PERMIT**

**I. INTRODUCTION**

On January 5, 2010, the Vermont Public Service Board ("Board") issued an Order and Certificate of Public Good ("CPG") in this Docket approving the construction of the above-referenced project ("Project") by Vermont Electric Cooperative, Inc. ("VEC"). The Order and CPG provided that:

"Prior to construction, VEC shall obtain all necessary permits and approvals.

Construction, operation, and maintenance of the proposed Project shall be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Vermont Agency of Natural Resources and the U.S. Army Corps of Engineers."

On January 8, 2010, VEC filed a letter with the Board pursuant to V.R.C.P. 59(e) requesting that the Board adopt four proposed amendments to the January 5 Order. One of the proposed amendments involved revising the condition referenced above to allow VEC to use its designated lay-down area prior to receipt of a pending permit from the U.S. Army Corps of Engineers ("Army Corps"). In an Order dated January 15, 2010, the Board approved a modified

version of VEC's proposed amendment, as follows: ". . . VEC shall obtain all necessary permits and approvals, except that VEC is authorized to use the lay-down area as described in Finding 10 above immediately after issuance of this Order, provided the use is in accordance with the requirements of any permits or approvals from other agencies that apply to the use of this lay-down area."<sup>1</sup>

On January 26, 2010, VEC filed a second, and substantially different, request asking permission to commence construction prior to the issuance of the Army Corps' permit, in those sections of the Project that are not subject to the Army Corps' jurisdiction. However, VEC would not begin construction in those areas until after it receives its Conditional Use Determination ("CUD") from the Vermont Agency of Natural Resources ("ANR"). VEC represents that the Vermont Department of Public Service ("Department"), ANR and the Army Corps do not oppose VEC's request. In this Order, we deny VEC's January 26 request, for the reasons set forth below.

## **II. THE PARTIES'S POSITIONS**

In its filing, VEC asserts that to minimize the environmental impacts of the Project, VEC must initiate its winter construction plan now. VEC argues that waiting to start any construction work until after receipt of final approval from the Army Corps will unduly delay the Project, thus diminishing the advantages of winter construction. VEC anticipates that it will receive its CUD from ANR by February 8, 2010, and expects to receive approval from the Army Corps by February 16, 2010. To date, VEC represents that it has received its Storm Water Construction Permit and expects to receive permission from the Vermont Agency of Transportation to work within the highway rights-of-way once it knows the exact date for construction in those areas. VEC also states that in order to comply with a condition of the pending Army Corps permit to offset the impacts of the Project on wetlands, VEC is currently engaged in negotiations with the owners of property adjacent to the Project that will be set aside for establishing a conservation easement for comparable wetlands.

As noted above, VEC represents that the Department, ANR and the Army Corps do not oppose VEC's request.

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1. Docket No. 7545, Order of 1/15/10 at 2.

### **III. DISCUSSION AND CONCLUSION**

VEC's current request differs significantly from VEC's January 8 filing in that VEC is now seeking permission to initiate substantial, permanent construction work on the overall Project prior to the issuance of the necessary Army Corps permit. VEC's prior request of January 8 involved only the use of the lay-down area, which constitutes a very small portion of the Project and does not involve the construction of permanent structures. Although VEC proposes to limit the work to those areas of the Project that do not come under the Army Corps' jurisdiction, that work will nevertheless involve the commencement of substantial permanent construction that, once started, can not be easily reversed. Modifications to the Project to accommodate the Army Corps' approval process, or a failure in negotiations between VEC and property owners over the required conservation easement, could potentially result in the relocation of certain sections of the Project, or halt construction of the Project altogether, potentially rendering work completed in the interim as a wasted effort, with the expense of such a miscalculation falling on the shoulders of VEC's members. While we typically approve projects under the Section 248 process based on the reasonable presumption that all necessary permits and approvals from other regulatory agencies will be forthcoming, we are also cognizant of the fact that this unknown introduces material risk to any project since those approvals may be delayed or denied. For that reason, we attempt to mitigate these risks by imposing our standard requirement that all necessary permits be obtained prior to construction.

Another area of concern relates directly to whether the Project, at this point in time, satisfies the statutory requirements of 30 V.S.A. § 248(b)(5), as those requirements relate to the criteria in Title 10, specifically § 6086(a)(1)(G) concerning wetlands. As mentioned above, our approval of the Project was predicated on the presumption that VEC would obtain the necessary permit from the Army Corps to perform construction work in wetland areas under the Army Corps' jurisdiction. Given that the necessary permit from the Army Corps has not yet been granted to VEC, we are unwilling to authorize commencement of construction on the Project.

Therefore, we deny VEC's request to commence construction prior to the issuance of the necessary Army Corps permit.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 2<sup>nd</sup> day of February, 2010.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: February 2, 2010

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*